IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Petition No.21954 of 2004

Jamil Akhtar .. Petitioner

Vs.

1.The Assistant Commandant,
Central Industrial Security Force,
6th Reserve Battalian,
Arakkonam.

2.The Commandant,
Central Industrial Security Force,
6th Reserve Battalian,
Suraksha Campus,
Vellore-631 152.

3.The Deputy Inspector General,
Central Industrial Security Force,
South Zone, "D" Block,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records relating to the order passed by the third respondent in his order No.V-11014/01/2004/L&R(SZ)/1540 dated 27.02.2004 confirming the order passed by the second respondent in his order No.V-11014/6RB/Disc-Appeal/2003-10697 dated 12.11.2003 confirming the order passed by the first respondent in his order No.V-15015/6RB/Disc/MIN-JA-1/2003-8288 dated 08.09.2003, quash the same and to direct the respondents to refund the seven days pay fine to the petitioner and to make necessary entries in the service records.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.M.Dhamodaran

ORDER

(Order of the Court was delivered by P. SATHASIVAM, J.)

Aggrieved by the orders of the respondents dated 08.09.2003,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

12.11.2003 and 27.02.2004, the petitioner has filed the above writ petition to quash the order of punishment viz., fine of seven days pay.

2. Learned counsel for the petitioner, after taking us through the charge memorandum, has submitted that in view of the specific reply by the petitioner denying the same and also his request for enquiry by some other officer, it is but proper on the part of the first respondent to conduct enquiry and prove the charge levelled against him. According to him, in view of failure to follow such procedure, particularly, Rule 37(1)(a) and (b) of Central Industrial Security Force Rules, 2001, the order passed by the Original Authority, Appellate Authority as well as the Revisional Authority are liable to be quashed.

3. On the other hand, the learned counsel for the respondents submitted that in view of the fact that the petitioner was afforded an opportunity to put forth his defence and in view of minor punishment imposed, there is no obligation on the part of the Disciplinary Authority to hold the enquiry, and the procedure followed is in consonance with the provisions. Accordingly, the learned counsel for the respondents prayed for dismissal of the writ petition.

4. We have carefully considered the rival submissions.

5. The petitioner by name Jamil Akhtar of CISF , 6th Reserve Battalion, Arakkonam, was issued following charge memorandum:

> "Gross indiscipline, misuse of official capacity and unbecoming of a member of the Force in that on 13.03.2003 at bout 07.00 hours during fall in time, when Constable Nagendra Panwar reported that he is sick for one week, and line duty should be given to him. Ins/Exe Jamil Akhtar used "Bahan Chod Kya Bakbas Kar Raha Hai" which is un-parliamentary. "

6. It is not in dispute that on receipt of the above mentioned charge memorandum, the petitioner has submitted his reply dated 26.07.2003. In his reply, he has stated that the charge framed against him is baseless in order to make him a scapegoat, foul play has been committed by a group of indisciplined personnel. He also stated that the incident may be enquired through some other officer. Apart from the same, he has also highlighted several aspects disputing the charges levelled against him. The first respondent, Assistant Commandant, Central Industrial Security Force, 6th Reserve Battalian, Arakkonam, in spite of the specific reply of the petitioner denying the charge and praying for enquiry, without resorting to such recourse and after finding that enough materials are available, has awarded the penalty of fine to an amount equivalent to seven days basic pay. It is not in dispute that the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

penalty imposed is a minor one. In this regard, it is useful to refer Rule 37, which speaks about procedure for imposing minor penalties.

"37. Procedure for imposing minor penalties:-

(1) No order imposing any of minor penalties specified in rule 34 shall be made except after -

(a) informing the enrolled member in writing of the imputations of misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he wishes to make against the proposal;

(b) holding an inquiry, if the disciplinary authority so desires, in the manner laid down in sub-rules(3) to (22) to rule 36;

(c) taking the representation, if any, submitted by the enrolled member under Clause (a) and the record of inquiry, if any, held under Clause (b) into consideration; and

(d) recording the findings on each imputation of misconduct or misbehaviour."

7. It is pointed out that as per sub rule (a), the petitioner was afforded reasonable opportunity. In fact, pursuant to the charge memorandum, the petitioner submitted his reply in respect of the charge levelled against him. Sub rule (b) enables the Disciplinary Authority to hold an enquiry in the manner laid down under sub-rules (3) to (22) of Rule 36. No doubt, as per the said provision, it is the discretion of the disciplinary authority to conduct enquiry or not. However, in view of the specific stand taken in the reply disputing the charge levelled against him and the specific request for enquiry and also taking note of the fact that the disciplinary authority did not send any reply for his request, we are of the view that the ultimate penalty imposed by him cannot be sustained.

8. In the light of the rule referred to above, when a specific request is made for an enquiry by a competent officer which is supported by relevant materials, we are of the view that it is but proper on the part of the Disciplinary Authority either to reply giving reason for not holding the enquiry or by accepting his request, conduct enquiry as pleaded by the delinquent. Such recourse has not been followed in the case on hand. Though the orders have been passed by the Appellate and Revisional Authorities, this relevant aspect has not been considered by these authorities, who have committed an error in confirming the order of Disciplinary

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Authority. On this ground, we quash the impugned orders and remit the matter to the Disciplinary Authority for passing fresh order. As observed above, the writ petition is allowed to this extent. No costs.

raa

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Commandant,
Central Industrial Security Force,
6th Reserve Battalian,
Arakkonam.

2.The Commandant,
Central Industrial Security Force,
6th Reserve Battalian,
Suraksha Campus,
Vellore-631 152.

3.The Deputy Inspector General,
Central Industrial Security Force,
South Zone, "D" Block,
Rajaji Bhavan, Besant Nagar,
Chennai-600 090.

4. The Record Keeper,
VR Section, High court, Madras.

1 cc to Mr.M. Damodaran, sr 61354

1 cc to M/s M. Md. Ibrahim Ali,sr 61310

W.P.No.21954 of 2004

ntk(co)

bp/29.12

11.12.2006

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/